§ 36C-4B-4. Administrative provisions applicable to both charitable remainder annuity trusts and charitable remainder unitrusts.

(a) Creation of Remainder Interests in Charity. – Upon the termination of the noncharitable interests, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiary or beneficiaries, to the designated charity or charities, or shall hold the property in trust for the designated charity or charities in accordance with the terms of the trust document.

(b) Selection of Alternate Charitable Beneficiary if Remaindermen Do Not Qualify Under Section 170(c) of the Internal Revenue Code at Time of Distribution. – If the designated charity is not an organization described in section 170(c) of the Internal Revenue Code at the time when any principal or income of the trust is to be distributed to it, the trustee must distribute the principal or income to one or more organizations then described in section 170(c) of the Internal Revenue Code selected in accordance with the terms of the trust instrument. If the trust instrument does not provide for a method of selecting alternate charitable beneficiaries that are then qualified under section 170(c) of the Internal Revenue Code, the trustee must, in the trustee's sole discretion, select alternate trust beneficiaries that are qualified under section 170(c) of the Internal Revenue Code.

(c) Selection of Alternative Charitable Beneficiary if Remaindermen Do Not Qualify Under Section 170(b)(1)(A) of the Internal Revenue Code at Time of Distribution. – Notwithstanding subsection (b) of this section, if the designated charity is, at the time of the creation of the trust, an organization described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, and if the designated charity is not an organization described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code when any principal or income of the trust is to be distributed to it, the trustee must distribute the principal or income to one or more organizations then described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code selected in accordance with the terms of the governing instrument; however, in the event that the governing instrument does not provide a method of selecting alternative charitable beneficiaries that are then described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, the trustee shall, in his sole discretion, select one or more alternative charitable beneficiaries that are described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code and must distribute the principal or income to the organization or organizations so selected in shares as the trustee, in the trustee's sole discretion, shall determine.

(d) Prohibitions Governing Trustees. – Except for payment of the annuity amount or the unitrust amount to the beneficiaries, whichever is applicable, the trustee is prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, retaining any excess business holdings as defined in section 4943(c) of the Internal Revenue Code that would subject the trust to tax under section 4943 of the Code, making any investments that would subject the trust to tax under section 4944 of the Internal Revenue Code, and making any taxable expenditures as defined in section 4945(d) of the Code. The trustee shall make distributions at a time and in a manner as not to subject the trust to tax under section 4942 of the Internal Revenue Code.

(e) Distribution to Charity During Term of Noncharitable Interests and Distributions in Kind. – If the governing instrument of the trust provides for distribution to charity during the term of the noncharitable interests, the trustee may pay to the designated charity the amounts specified in the governing instrument that exceed the annuity amount or the unitrust amount payable to any of the beneficiaries for the taxable year of the trust in which the income is earned. If the governing instrument of the trust provides for distribution to charity in kind, the adjusted basis for federal income tax purposes of any trust property the trustee distributes in kind to charity during the term of the noncharitable interests must be fairly representative of the adjusted basis for those purposes of all trust property available for distribution on the date of distribution.

(f) Investment Restrictions on Trustee. – Nothing in the trust instrument shall be construed to restrict the trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

(g) Distribution From Trust Used to Administer an Estate to Charitable Remainder Trust. – If the governing instrument of a revocable inter vivos trust provides that the revocable inter vivos trust will be used partially to administer the estate of the settlor or for some other purpose, and further provides the assets will then be distributed to another trust that is a charitable remainder trust, upon the death of the settlor, or upon the occurrence of any event that causes the trust to become irrevocable, then the trust shall become irrevocable, and the trustee of this trust shall perform any remaining duties or obligations provided for in the trust instrument and then transfer the property specified in the governing instrument to the trustee of the charitable remainder trust to be held, administered, and distributed in the manner and according to the terms and conditions provided by the charitable remainder trust.

(h) Payment of Taxes by Noncharitable Beneficiary. – In the case of any inter vivos charitable remainder trust that is liable to pay, from trust property, any federal estate, state inheritance, or other similar death taxes by reason of the death of the settlor of the trust, the interest of any noncharitable beneficiary of the trust shall terminate upon the death of the settlor unless the noncharitable beneficiary furnishes to the trust sufficient funds for payment of all those taxes attributable to the interest of the noncharitable beneficiary in the trust property, and the termination shall be deemed as the occurrence of a qualified contingency. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 1985, c. 406, ss. 4, 5; 2005-192, s. 2.)